FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 30 1939
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 534.

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California, et al.,
Appellants,

v.

PAUL GRAY, INC., a California corporation, et al.,
Appellees.

Appeal From the District Court of the United States for the Southern District of California.

JOINT BRIEF OF PARTIES ON AMOUNT IN CONTROVERSY AND OTHER JURISDICTIONAL QUESTIONS.

EARL WARREN,
Attorney General of California,
FRANK W. RICHARDS,
JAMES H. OAKLEY,
Deputy Attorneys General of California,
Attorneys for Appellants,
Los Angeles, California.

AMOS M. MATHEWS,
Chicago, Ill.,
Of Counsel for Appellants.

EVERETT W. MATTOON,
Attorney for Appellees,
Los Angeles, California.

EYNON PRINTING CO., INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 534.

RAY INGELS, as Director of the Department of Motor Vehicles of the State of California, et al.,
Appellants,

v.

PAUL GRAY, INC., a California corporation, et al.,
Appellees.

Appeal From the District Court of the United States for the Southern District of California.

JOINT BRIEF OF PARTIES ON AMOUNT IN CONTROVERSY AND OTHER JURISDICTIONAL QUESTIONS.

At the oral argument on Monday, March 27, 1939, the Court requested counsel for appellees and counsel for appellants to file briefs on the subject of the amount in controversy in this cause. In order to conserve the time of the Court the respective counsel have joined in submitting one brief, which also covers the other jurisdictional questions discussed in the oral argument.

Amount in Controversy

Without question the requisite amount must exist as to at least one plaintiff-appellee; that is, the requisite amount cannot be reached by aggregating the claims of two or more plaintiffs.

It is also clear that "The disputed tax is the matter in controversy, and its value, not that of the penalty or loss which payment of the tax would avoid, determines the jurisdiction," *Healy* v. *Ratta,* 292 U. S. 263, 269.

The amount in controversy, however, in the case of a tax of the present character, is not less than the amount of the tax "which may be demanded within any time reasonably required to conclude the litigation," *Healy* v. *Ratta, supra,* p. 272. The decision in that case turned upon the fact that the largest possible annual amount of the tax involved was, as claimed by complainant, $350.00, and as found by the district court, $300.00; while this Court held the largest annual exaction in issue was $85.00 (pp. 266, 267, 265). Under complainant's own claims in that case nine years of existence of the *status quo* would have been required to accumulate the amount of the tax to $3000.00, while under this Court's holding some twenty years would have been required.

That the amount in controversy in the instant case is the amount of the tax required to be paid within a reasonable period of time is shown by direct analogy by *Packard* v. *Banton,* 264 U. S. 140. There the complainant operated four taxicabs. The statute in question required an expenditure of $18.50 in insurance premiums per week for each cab, or a total of $74.00 per week. The opinion states "that his business would otherwise suffer." (pp. 142, 145). Jurisdiction was sharply contested by defendants. The Court held the requisite jurisdictional amount to be shown by the evidence recited above, although other evidence indicated the necessary expenditures would be considerably less (p. 145).

The testimony of one of the plaintiffs-appellees, Asher (R. 105), who testified on October 8, 1937 (R. 71), showed that during the preceding seven years he had caravaned into California more than four thousand cars. His testimony and the bill of complaint (R. 1) show that he is then continuing in the same business as during the preceding seven years and that the purpose of the suit is to permit him to remain in the same business without being required to pay the fee. The bill of complaint shows that he wants to bring in convoys of cars in the future, as he has done in the past, without payment of the fee. If he is continuing in business at and after the time of his testimony on the same scale as before, he will bring into the state about five hundred fifty cars per year, on which the total fees at $15.00 per car will be $8250. *Packard* v. *Banton, supra,* is express authority that under such circumstances the amount of the tax in controversy will be measured by assuming a continuance of present operations on the present scale for a reasonable time. In *Packard* v. *Banton* that reasonable time must have been about forty weeks, at least.

That the amount in controversy in a tax case is the amount accruing during the period of a year or more, rather than the amount of tax immediately due at the time of the trial or commencement of the suit, definitely appears from the Court's opinion in *Grosjean* v. *American Press Co.,* 297 U. S. 233, and from the transcript of record and briefs of counsel on file. In the opinion the Court states (p. 241):

> "* * * the record shows, that the requisite amount is involved in respect of each of six of the nine appellees."

The tax was two per cent of the gross business, and was payable quarterly on each quarter's gross business. The appellants contended, citing *Healy* v. *Ratta, supra* (292 U. S. 263), and pointed to the record, that as to eight of the nine appellees the first quarterly payment due Octo-

ber 1, 1934, was much less than $3000.00, being around a third or a fourth of that sum (appellants' brief in Grosjean case, p. 22); and claimed that under the authority of *Healy* v. *Ratta* the jurisdictional amount as to such eight was wanting. Appellees in the *Grosjean* case stated in their brief (pp. 12-13) that the requisite amount in controversy exists if

> "* * * the total amount of the tax demanded, or which may be demanded, within any time reasonably required to conclude the litigation, exceeds the jurisdictional amount. *Healy* v. *Ratta*, 292 U. S. 263 (1934)."

Appellees' brief then points out that except as to three of the nine appellees

> "* * * the amount of the tax accruing during the first twelve months was in excess of Three Thousand Dollars * * *."

It thus clearly appears that the statement in the Court's opinion in the *Grosjean* case (p. 241), "that the requisite amount is involved in respect of each of six of the nine appellees," was based on the amount of the tax which would accrue during the period of a year, provided the six appellees conducted their future operations on the same scale as in the past. The evidence was all submitted in the fall of 1934, and the calculation as to the amount of the tax which would become due in 1935 was all based upon experience prior to the fall of 1934.

It is to be kept in mind that the tax in the *Grosjean* case, as in the instant case, was dependent upon continuance in business and the amount of the business done.

There is a sharp difference in the treatment of this question between cases where jurisdiction is denied by the defendants, and where, as in the instant case, no denial of jurisdiction is made by any party. In *McNutt* v. *General Motors Corporation*, 298 U. S. 178, where the Court dis-

cusses at length the duty of the federal courts to investigate questions of jurisdiction *sua sponte*, the Court states in conclusion (p. 190):

> "Here, the allegation of the bill of complaint was traversed by the answer. The court made no adequate finding upon that issue of fact, and the record contains no evidence to support the allegation of the bill."

And in *Kvos* v. *Associated Press*, 299 U. S. 269, the Court said (p. 280):

> "Since the allegation as to amount in controversy was challenged in appropriate manner, and no sufficient evidence was offered in support thereof, the bill should have been dismissed. *McNutt* v. *General Motors Acceptance Corp.*, supra, p. 190."

In *Bitterman* v. *L. & N. R. R. Co.*, 207 U. S. 205, the Court said (p. 224):

> "The bill contained an express averment that the amount involved in the controversy exceeded, exclusive of interest and costs, the sum of five thousand dollars as to each defendant. The defendants not having formally pleaded to the jurisdiction, it was not incumbent upon the complainant to offer proof in support of the averment."

Without in any way intending to imply that the parties to litigation can, by their pleadings, remove this question from the consideration of the Court, we point to the fact that, so far as we have been able to ascertain within the time at our disposal, this Court has not, since the decision in the *Bitterman* case, held that any cause lacked the requisite jurisdictional amount, which came to it, as has the present case, with the jurisdiction not contested, with a finding of the district court sustaining jurisdiction, and with testimony comparable to that present here, where one plaintiff (Asher, R. 105) shows that if he continues business on his present

scale for one year he will be obliged to pay more than eight thousand dollars in taxes.

The Court intimated during oral argument that there might be some infirmity in the allegations of the bill of complaint and in the District Court's finding as to the jurisdictional amount, because there are a number of plaintiffs and the allegation and finding might be construed to mean an aggregate amount of all of the plaintiffs. We do not believe such a construction is tenable. We can find no decision to support it. The rule that the jurisdictional amount in cases of this character must exist as to each party is a simple one, long established, and well known. Counsel have not contended otherwise at any time. In making finding of fact number IV (R. 58), it seems impossible to attribute to the District Court an intention to make that an aggregate finding in view of the well known and long established true rule.

Other Jurisdictional Questions

The Act of August 21, 1937 (50 Stat. at L. 738), limiting the jurisdiction of district courts in suits involving state taxes, does not apply to this case. Section 2 of the Act provides that it shall not apply to suits commenced prior to its passage. This action was commenced on July 14, 1937 (R. 1).

The bill of complaint alleges (par. XI, R. 8) that there exists no method to recover back these fees if paid, and this is not denied. That is the law in California. Hence no ade-

quate remedy at law exists, and there is jurisdiction in equity. *Matthews* v. *Rodgers*, 284 U. S. 521.

Respectfully submitted,

EARL WARREN,
Attorney General of California,
FRANK W. RICHARDS,
JAMES H. OAKLEY,
Deputy Attorneys General of California,
Attorneys for Appellants,
Los Angeles, California.

AMOS M. MATHEWS,
Chicago, Ill.,
Of Counsel for Appellants.

EVERETT W. MATTOON,
Attorney for Appellees,
Los Angeles, California.